

ENTERED

March 08, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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|------------------------|---|------------------------|
| CARLOS AMILCAR | § | CIVIL ACTION NO. |
| UZCATEGUI, | § | 4:20-cv-00935 |
| Plaintiffs, | § | |
| | § | |
| | § | |
| vs. | § | JUDGE CHARLES ESKRIDGE |
| | § | |
| | § | |
| TRI-COUNTY GIN OF | § | |
| NORTH MISSISSIPPI LLC, | § | |
| <i>et al</i> , | § | |
| Defendants. | § | |

**ORDER ADOPTING
MEMORANDUM AND RECOMMENDATION**

This case involves claims by Plaintiff Carlos Amilcar Uzcategui under Title VII of the Civil Rights Act for harassment and discrimination on the basis of race and religion. See Dkts 1, 3. He proceeds here *pro se*.

The case was referred for disposition to Magistrate Judge Sam S. Sheldon. Dkt 10. He considered and ruled upon several motions. Dkt 31. *First*, he recommended that the motion to dismiss by Defendant Keith Pearson be denied as moot. Dkt 6. *Second*, he recommended that the motion to dismiss by Defendants Tri-County Gin of North Mississippi, LLC, Kenny Bolen, and Steve Ratcliff be granted. Dkt 13. *Third*, he recommended that the motion for voluntary dismissal as to Bolen and Pearson by Uzcategui be granted. Dkt 19. *Fourth*, he recommended that the motion by Defendants to strike and the motions by Uzcategui for hearing and for default judgment be denied as moot. Dkts 22, 23, 27.

Uzcategui filed an objection. Dkt 34. He contends that the Magistrate Judge erred in determining that personal jurisdiction is lacking over Tri-County Gin. *Id* at 5–6. He also raises again his

arguments that Defendants failed to timely respond to his complaint. *Id.* at 7–8.

The district court conducts a *de novo* review of those conclusions of a magistrate judge to which a party has specifically objected. See 28 USC § 636(b)(1)(C); *United States v Wilson*, 864 F2d 1219, 1221 (5th Cir 1989). To accept any other portions to which there is no objection, the reviewing court need only satisfy itself that no clear error appears on the face of the record. See *Guillory v PPG Industries Inc*, 434 F3d 303, 308 (5th Cir 2005), citing *Douglass v United Services Automobile Association*, 79 F3d 1415, 1420 (5th Cir 1996); see also FRCP 72(b) Advisory Comm Note (1983).

The Court has reviewed *de novo* the objections made by Uzcategui. They lack merit. The Magistrate Judge correctly determined that this Court lacks personal jurisdiction over Tri-County Gin for the reasons and citations given. In particular, see Dkt 31 at 5. Dismissal without prejudice is appropriate on this basis because it isn't a judgment on the merits. *Guidry v United States Tobacco, Inc*, 188 F3d 619, 623 n 2 (5th Cir 1999), citing *Rubrgas AG v Marathon Oil Co*, 526 US 574, 584–85 (1999).

The repeated failure-to-respond arguments raised by Uzcategui aren't appropriate for consideration because the Magistrate Judge expressly considered the personal-jurisdiction issue before the improper-service issue. Dkt 31 at 7 n 20. Even so, the docket doesn't reflect that Defendants were ever served. And so argument that they didn't timely respond also fails on the merits. See Dkts 5, 7.

The Court has otherwise considered the Memorandum and Recommendation and reviewed the pleadings, the record, the applicable law, the objection, and the response. No clear error appears.

The Memorandum and Recommendation of the Magistrate Judge is ADOPTED as the Memorandum and Order of this Court. Dkt 31.

The motion to dismiss by Defendant Keith Pearson is DENIED AS MOOT. Dkt 6.

The motion to dismiss by Defendants Tri-County Gin of


North Mississippi, LLC, Kenny Bolen, and Steve Ratcliff is GRANTED. Dkt 13. Claims against those defendants are DISMISSED WITHOUT PREJUDICE. Dkts 1, 3.

The motion for voluntary dismissal as to Defendants Kenny Bolen and Keith Pearson by Uzcategui is GRANTED. Dkt 19. Claims against those defendants are DISMISSED WITH PREJUDICE.

The motion by Defendants to strike and the motions by Uzcategui for hearing and default judgment are DENIED AS MOOT. Dkts 22, 23, 27.

SO ORDERED.

Signed on March 8, 2021, at Houston, Texas.


Hon. Charles Eskridge
United States District Judge